IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1158 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

THE STATE OF GUJ

Versus

HABIBHAI VALIBHAI LAKHANI & ORS

Appearance:

BD DESAI APP for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 23/06/2000

C.A.V. JUDGEMENT

This application under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure challenges the order of the learned Chief Judicial Magistrate, Surendranagar in

Formal Inquiry Case No.8/94 which has been confirmed by the learned Sessions Judge, Surendranagar. The impugned order in the Inquiry Case No.8/94 orders an inquiry by the District Superintendent of Police into the alleged acts of the District Magistrate and the Deputy Collector, who are arraigned as the accused in the complaint alleging offences punishable under Sections 341 and 114 of the Indian Penal Code. The grievance of the petitioner is that the District Magistrate is an officer superior in rank to the District Superintendent of Police and, therefore, the learned Chief Judicial Magistrate ought not to have ordered an inferior officer to investigate into the complaint of the offences alleged against the District Magistrate and ought to have inquired into the allegations himself. It is also submitted that the learned Sessions Judge had erred in holding in the revision that the order passed by the Court of the Chief Judicial Magistrate was an interlocutory and discretionary order which required no interference. The learned advocate for the petitioner has relied upon the judgment of this Court in Criminal Revision Application No.203 of 1983, of which the relevant part which is relied upon reads as under:

> "However, the learned Magistrate considered that because the wordings in Section 202 (1) of the Code are "by such other person as he thinks fit", he can pass such an order directing the District Magistrate to conduct the inquiry. This is too much. The expression "by such other person" would not mean a person having such judicial powers and who would normally be superior to the Magistrate. Even though a Magistrate is not directly subordinate to a District Magistrate, the hierarchy is such that District Magistrate would be on higher level as compared to Judicial Magistrate First Class. The expression "by any other person" can be considered to be a Sessions Judge or a High Court Judge or a Chief Justice. Would it be proper for the learned Magistrate to order inquiry by any of such persons? The order of the learned Magistrate is itself patently absurd and, therefore, deserves to be set aside."

2. Although the facts in the present case and those in the case referred to above are not identical, it is clear that practical difficulties would arise if the District Superintendent of Police is required to inquire into the allegations made against an officer superior to him. It is true that the language of Section 202 of the Cr.P.C. confers upon the Magistrate the discretion to

postpone the issue of process and to either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. This discretion has obviously to be exercised in furtherance of the object of the provision. The purpose of holding an inquiry is to help the Magistrate to decide whether there is sufficient ground for proceeding. This purpose, in the facts of the present case, could be served by the Magistrate himself inquiring into the case and the anomalous situation likely to arise by the impugned order could have been avoided. It is also suggested on behalf of the petitioner that the investigation could have been directed to be carried out by a superior police officer or by any other agency if the Magistrate could not have, for any reason, carried out the inquiry himself.

3. In view of the facts and submissions as above, more particularly when the District Magistrate and the District Superintendent of Police are in the same hierarchy of the State administration, the petitioner is justified in the grievance that the discretion is not properly exercised in the impugned order. The petition is, therefore, required to be allowed and is hereby allowed. The order of the learned Chief Judicial Magistrate, Surendranagar in Inquiry Case No.8/94 is set aside and it is ordered that the learned Chief Judicial Magistrate himself shall carry out the inquiry under Section 202 (1) of the Cr.P.C. Rule is made absolute with no order as to costs.

(KMG Thilake)

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